IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No.151 of 1998

Decided on : November 21, 2006

Fateh Mohammed **...Appellant.**

VERSUS

Sher Khan and others **...Respondents.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?

For the Appellant : Mr. K.D. Sood with Mr. B.K. Sood, Advocate.

For the Respondents : Mr. Ramakant Sharma, Advocate.

Surjit Singh, Judge (Oral)

This appeal by the plaintiff is directed against the judgment and decree of the first Appellate Court, whereby, reversing the decree of the trial Court, the suit of the appellant-plaintiff for permanent prohibitory injunction, which he instituted against the respondents-defendants, has been dismissed.

2. Relevant facts may be noticed first. Appellant—plaintiff and respondents Sher Khan, Chuhra Khan and late Sarwar Ali, now represented by his LRs, are the sons of late Shri Faiz Mohammed, who died in the year 1946. Deceased respondent Sabratan, who was impleaded as defendant No.4, was the widow of said Faiz Mohammed, or say the mother of the plaintiff and the above-named respondents-defendants. Faiz Mohammed had some understanding with the owners that the suit land and some other land, total area of

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Whether the reporters of the local papers may be allowed to see the Judgment?

which was around 47-48 bighas and was part of river-bed, would be reclaimed by him and after reclamation he would be allowed to cultivate that land. In lieu of rent, he was supposed to have discharged the liability of the landowners for payment of land revenue. Faiz Mohammed died in the year 1946.

3. Appellant-plaintiff alleged that in or around the year 1965 he was settled as tenant on the suit land by the then landowners, namely Maya Devi and Sarup Devi, but entries in the revenue record, showing him as tenant, were not there and so, sometime in the year 1982, he made an application for the correction of entries in his favour and that application was allowed, on a concession made by a representative of the landowners, and his name was entered in the column of possession in the capacity of a tenant, on payment of rent at the rate of Rs.30/- per annum. He further claimed that after the incorporation of the aforesaid entries in the revenue papers, proprietary rights in respect of the suit land were conferred upon him, under the provisions of Section 104 of the H.P. Tenancy and Land Reforms Act, and mutation was also attested in his favour. He alleged that sometime prior to the institution of the suit, the defendants without any right, title or interest in the suit land started throwing threats to make encroachment upon the suit land. So, he filed a suit for issuance of permanent prohibitory injunction restraining the respondents-defendants from causing any interference in his possession or making any encroachment.

4. Defendants No.1 to 3 filed a common written statement. Defendant No.4, the widow of Faiz Mohammed, filed a separate written statement. However, the stand taken in the two written statements was the same. It was stated that on the death of Faiz Mohammed his widow, impleaded as defendant No.4, entered into a contract with the landowners, under which the entire land which had been given for reclamation to the father of the plaintiff and defendants No. 1 to 3, was given to defendant No.4 for reclamation and she, assisted by defendants No. 1 to 3, reclaimed a substantial portion of the land and made the same cultivable. They further stated that proprietary rights in respect of 22 bighas 8 biswas land, out of the total area, were conferred on defendant No.4, the widow of Faiz Mohammed, in accordance with the provisions of Section 104 of the H.P. Tenancy and Land Reforms Act, but with respect to the rest of the land, i.e. the suit land, proprietary rights could not be conferred upon her, because she did not have the money to pay the compensation assessed, as per the scale given in Section 104 of the H.P. Tenancy and Land Reforms Act and the Rules framed thereunder. They alleged that the plaintiff in connivance with the landowners got incorporated his name as tenant in the revenue papers in respect of the suit land and on the strength of that entry he even managed to get the mutation of conferment of proprietary rights attested in his favour behind their back.

5. Trial Court decreed the suit, holding that the plaintiff was owner in possession of the suit land. Respondents-defendants

went in appeal to the Court of District Judge, and the Appellate Court reversed the decree of the trial Court and dismissed the suit, holding that there was no evidence of induction of the plaintiff as tenant on the suit land in the year 1965 and that the suit land as also the land, in respect of which proprietary rights had been conferred upon defendant No.4, was initially held by Faiz Mohammed and after his death it was held by the plaintiff and the defendants jointly and that the entries in the revenue papers, initially showing the appellant-plaintiff as tenant and then as owner, after attestation of mutation of conferment of proprietary rights, were wrong and illegal.

6. Appellant-plaintiff then filed the present appeal in this Court, which was admitted on 7.7.1998 without formulating any substantial questions of law. The matter was listed for final hearing. On 27.12.2004, this Court noticed that the appeal had been admitted without formulating any substantial questions of law. It then ordered that Question No.3 in the list of questions, formulated by the appellant and submitted with the memorandum of appeal, requires consideration. Today, when the matter was being heard, it was felt that another substantial question of law arises. The same is as follows:

> Whether the first Appellate Court was not justified in reversing the reasoned finding of the trial Court that the appellant-plaintiff had been holding the suit land as a tenant in his own right and the proprietary rights had rightly been conferred upon him, under Section 104 of the H.P. Tenancy and Land Reforms Act?

Question No.3, as forming part of the substantial questions of law formulated by the appellant and submitted with the memorandum of appeal, reads as follows:

> Whether the learned Lower Appellate Court had the jurisdiction to go into the question of tenancy rights, when not only the relationship of landlord and tenant between the land owners and the Plaintiff-Appellant was established, but the mutation of conferment of proprietary rights under the provisions of H.P. Tenancy and Land Reforms Act having been attested with the consent of the owners in favour of the Plaintiff-Appellant exclusively, could the revenue entries which were never assailed by the land owners and the mutation of conferment of proprietary rights be held to be wrongly or illegally attested by the learned Lower Appellate Court?

7. I have heard the learned counsel for the parties on both the question and gone through the record.

8. As regards Question No.3, admittedly the dispute is not between the landowners and the tenants and, therefore, the first Appellate Court cannot be stated to have committed any illegality or even an irregularity in examining the factual aspect of the matter, in the context whether the appellant-plaintiff had been inducted as a tenant or not and whether the order of conferment of proprietary rights in respect of the suit land was lawful. So, Question No.3 is answered against the appellant-plaintiff.

9. Coming to the next question, it is made out from the evidence on record that the approach of the first Appellate Court was totally misdirected. No doubt, the appellant-plaintiff, while in

the witness box, stated that at one point of time the suit land and some other land was allowed to be reclaimed by his father, by the previous owners, and this statement gives the impression that the interest of the father of the plaintiff and defendants No. 1 to 3 in the suit land had been inherited by them, but this statement is not to be read in isolation. In fact, it is nobody's case that rights or interest of the father of the parties in the suit land or other land given to him for reclamation had been inherited by the plaintiff and the defendants. As already noticed, while summarizing the facts, the defendants themselves stated that the suit land and some other land was given for reclamation to the father of the plaintiff and defendants No. 1 to 3 by the previous owners, but when he died in the year 1946, the mother of the plaintiff and said defendants, impleaded as defendant No.4, made a fresh contract with the landowners for the reclamation of the land on the same terms and conditions on which it was given to their father. However, the documentary evidence on record belies the claim of the defendants that the whole of the land, which measured 47-48 bighas, that was allowed to be reclaimed by the father of the plaintiff and defendants No. 1 to 3, was allowed to be reclaimed by defendant No.4, under the fresh contract, which she made with the landowners. On the contrary, the entries in the revenue record go to show that defendant No.4 carried out reclamation and was inducted as tenant and then conferred the proprietary rights, under Section 104 of the H.P. Tenancy and Land Reforms Act, only in respect of 22 bighas 8 biswas land with respect to which there is no dispute. The copy of Jamabandi, Ex. PG, of

this 22 bighas 8 biswas land, which is for the year 1986-87, substantiates this view.

10. At no point of time defendant No.4 or for that matter defendants No. 1 to 3 were shown to be in possession of the suit land. As a matter of fact, even the plaintiff was not recorded in possession of the suit land prior to the passing of order, copy Ex. PX, in his favour by the Tehsildar. This order is dated 28.4.1982. Plaintiff's case is that the suit land was given to him on annual rent of Rs.30/- in the year 1965 but the entries were not made in his favour in the revenue papers and, therefore, he made an application to the Tehsildar in the year 1982 for incorporation of his name as tenant in the revenue papers with respect to the suit land. The owners were made party to this application, as is clear from Ex. PX. A *Karinda* (manager) of the owners appeared before the Tehsildar and made a statement conceding that the appellant-plaintiff was a tenant in respect of the suit land. Consequently, the Tehsildar passed an order for the incorporation of the name of the appellant-plaintiff as a tenant, at the rate of Rs.30/- per annum as rent, in the revenue papers. After the passing of this order, name of appellant-plaintiff appeared in the Jamabandi for the year 1981-82, copy Ex. PF. His name was carried to the next Jamabandi, which was for the year 1986-87, copy Ex. PA. Thereafter, mutation of conferment of proprietary rights was entered and attested in his favour. The copy of the order is Ex. PB. As per this order, the appellant was made the owner of the suit land. The date of the order is 8.10.1990. These documents and the fact that defendant No.4 is entered as

owner in possession of 22 bighas 8 biswas land in the Jamabandi for the year 1986-87, copy Ex. PG, lead to irresistible conclusion that the suit land was not given to defendant No.4 under the contract, which she made with the landowners, after the death of her husband in the year 1946, and that in fact this land was given to the appellant-plaintiff in the year 1965 as a tenant on payment of rent at the rate of Rs.30/- per annum, as claimed by him.

11. As a result of the above discussion, the substantial question of law framed today and as noticed hereinabove, is answered in favour of the appellant-plaintiff.

12. Consequently, the appeal is accepted, judgment and decree of the first Appellate Court are set aside and the judgment and decree of the trial Court are restored.

November 21, 2006(sd) **(Surjit Singh), J.**